

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MITSUI SUMITOMO INS. CO., LTD.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 08 CV 5700
)	
ROADWAY EXPRESS, INC., et al.,)	
)	
Defendants.)	

MOTION TO DISMISS OF DEFENDANT ROADWAY EXPRESS, INC.

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, defendant Roadway Express, Inc. ("Roadway") moves this Court to dismiss all causes of action against Roadway in Plaintiff's Complaint because they are preempted by the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706. No matters outside the pleadings are presented or are necessary in connection with this motion. A brief in support of this motion is filed concurrently and is incorporated herein

Respectfully submitted,

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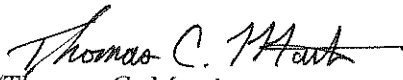
Attorneys for Defendant Roadway Express, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served via mail and ECF/CM this 28th day of July, 2007, upon:

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**JUDGMENT AND ORDER DISMISSING PLAINTIFF'S
COMPLAINT AGAINST DEFENDANT ROADWAY EXPRESS, INC.**

Be it remembered that on the ____ day of _____, 2008, the Court reviewed the file in the above-styled and numbered cause, including the Motion to Dismiss and the Brief in Support of that Motion submitted by Defendant Roadway Express, Inc., the response and supporting brief of Plaintiff Mitsui Sumitomo Insurance Company, Ltd., and the reply of Defendant Roadway Express, Inc. On the basis of that review, and being otherwise fully advised, the Court finds that the Motion to Dismiss submitted by Defendant Roadway Express, Inc. is well-taken and Plaintiff's Complaint should be, and is hereby, dismissed as against Defendant Roadway Express, Inc.

Because all of the claims asserted against Defendant Roadway Express, Inc. in Plaintiff's Complaint arise out of the shipment of goods by an interstate carrier, the Court finds that they are preempted by the Carmack Amendment to the Interstate Commerce Act as carried forward in the Interstate Commerce Commission Termination act of 1995 ("ICCTA"). 49 U.S.C. § 14706. The Carmack Amendment completely preempts state common-law and federal common-law claims and provides the sole cause of action for loss or damage to goods arising from the interstate transportation of those goods by a motor carrier.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that all claims asserted against Defendant Roadway Express, Inc. in Plaintiff's Complaint are dismissed with prejudice. Each party shall bear its own costs.

SIGNED this the _____ day of _____, 2008.

JUDGE P. KEVIN CASTEL
UNITED STATES DISTRICT JUDGE